

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DAN LAMBERT,**

**No. 23344-8-III**

**Appellant,**

**v.**

**Division Three**

**DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES,**

**Respondent.**

**UNPUBLISHED OPINION**

**SCHULTHEIS, A.C.J.**—Dan Lambert, a pro se litigant, appeals from a 2004 Spokane County Superior Court order affirming a review decision and final order upholding an administrative law judge’s determination that the Department of Social and Health Services (Department) is entitled to recover \$9,533.04 in cash, medical, and food assistance overpaid to Mr. Lambert as a result of his intentional withholding of financial information. Mr. Lambert’s principal contention is that the Department’s recovery action is barred by the statute of limitation. We disagree and affirm.

**FACTS**

Mr. Lambert received food, cash, and medical assistance through the Department in 1995 and 1996. But he was then also actively engaged as a partner in a general partnership business that earned substantial income. The Department learned of this business activity and determined he had willfully withheld information about his self-employment income, as well as a \$2,500 certificate of deposit held jointly with his mother. On April 24, 1996, the Department sent him notice that his cash, medical, and food assistance would be terminated at the end of the month because his resources exceeded the standards for assistance. He requested a fair hearing, but failed to appear and the appeal was dismissed. The Department thus concluded that he received overpayments of \$9,824.04 from March 1995 through April 1996.

On March 26, 1997, the Department sent Mr. Lambert an intentional household error issuance letter seeking recovery for food stamp overpayments and an overpayment notice seeking recovery of cash and medical assistance. In 1999, the Department completed a fraud investigation and referred the matter to the Spokane County prosecutor for criminal charges. In October 1999, Mr. Lambert pleaded guilty to third degree theft-welfare fraud and third degree possession of stolen property. The judgment included an order to pay restitution to the Department. But the court subsequently allowed him to withdraw the guilty plea, and the judgment (including the restitution order) was vacated.

Meanwhile, the Department recovered some of the food stamp overpayment from Mr. Lambert through deduction from

subsequent assistance payments. On August 22, 2002, the Department sent him a notice of debt in the amount of \$9,533.04. Mr. Lambert disputed the debt and the matter ultimately proceeded to a hearing before an administrative law judge (ALJ) on July 29, 2003. The ALJ determined that Mr. Lambert had intentionally withheld financial information from the Department, resulting in overpayment of benefits. The ALJ rejected testimony by Mr. Lambert as not credible. On August 28, 2003, the ALJ entered an initial decision affirming the Department's notice of debt in the amount of \$9,533.04.

A review judge upheld the ALJ's findings as supported by substantial credible evidence and affirmed the initial decision in a review decision and final order issued on January 29, 2004. The review judge also concluded the Department had tolled the applicable statute of limitation by initiating an administrative remedy within six years of the March 26, 1997 notices seeking recovery of the overpayment.

Mr. Lambert then filed a notice of appeal of the review decision and final order to the superior court. He cited no legal basis for his appeal and filed no other supportive pleadings. After a hearing on August 6, 2004, the superior court observed in written findings of fact and conclusions of law that Mr. Lambert assigned no error to any of the administrative findings, which were thus verities and were supported by substantial evidence in any event. Moreover, Mr. Lambert failed to allege that the Department or the ALJ erroneously interpreted or applied the law or committed any other violations warranting relief. The court thus affirmed

the January 29, 2004 review decision and final order. This appeal followed.

### **REVIEW STANDARDS**

On review of an agency decision, we sit in the same position as the superior court and apply the standards of the Administrative Procedure Act, chapter 34.05 RCW, to the agency record. *See Tapper v. Employment Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). The “burden of demonstrating the invalidity of agency action is on the party asserting invalidity.” RCW 34.05.570(1)(a). RCW 34.05.570(3)(a)-(i) sets forth nine bases for granting relief from an agency decision. As discussed *infra*, Mr. Lambert’s arguments in this appeal potentially implicate three of those bases: “(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law”; “(d) The agency has erroneously interpreted or applied the law”; and “(f) The agency has not decided all issues requiring resolution by the agency.” RCW 34.05.570(3)(b), (d), (f).

### **ANALYSIS**

Mr. Lambert’s only assignment of error is to a finding of fact in the ALJ’s August 28, 2003 initial decision that he failed to appear for the hearing in 1996. He now contends, as he did in the superior court, that he had no notice of the hearing and thus had no opportunity to appear. He contends the ALJ erred by failing to make any finding on the notice requirement. Based upon this assignment of error, he argues in his opening and reply briefs that the missing notice in

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1996 was a jurisdictional requirement that rendered all subsequent collection efforts of the Department legally defective, including those that would otherwise toll the six-year statute of limitation. The gist of his argument is that the Department first initiated collection efforts in its April 24, 1996 benefits termination letter but then did not resume any collection efforts until more than six years later on August 22, 2002, when it sent him the notice of debt. He thus concludes the Department is now time barred from recovering the claimed debt. We disagree.

In addressing Mr. Lambert's contentions, we review issues of law de novo. *See Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 233, 110 P.3d 1132 (2005). On mixed questions of law and fact, we determine the law independently and then apply it to the facts as found by the agency. *Hamel v. Employment Sec. Dep't*, 93 Wn. App. 140, 145, 966 P.2d 1282 (1998).

Mr. Lambert's theory unravels at the outset because the ALJ's finding that he failed to appear for the 1996 hearing is supported by substantial evidence and is a verity. *See, e.g., Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 819, 828 P.2d 549 (1992). And the lack of a finding as to notice needs no resolution because it is the January 29, 2004 review decision and final order in the Department's *recovery* action that is the subject of review by the superior court and this court. The 1996 proceeding pertained to *benefits termination*, which is not at issue in this appeal. It is clear that Mr. Lambert received timely notice and had the

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opportunity to be heard at the July 29, 2003 hearing giving rise to the initial decision affirming the Department's August 22, 2002 notice of debt. His contention that the Department lacked or lost jurisdiction over this matter is unsupported by authority and is incorrect. *See* chapter 388-02 WAC.

Thus, the dispositive question is whether the Department is nevertheless time barred from recovering from Mr. Lambert the overpayments he received from March 1995 through April 1996. The pertinent limitation statute was former RCW 43.20B.030 (1989), which provided in relevant part:

Except as otherwise provided by law, there will be no collection of overpayments and other debts due the department after the expiration of six years from the date of notice of such overpayment or other debt *unless the department has commenced recovery action in a court of law or unless an administrative remedy authorized by statute is in place.*

(Emphasis added.)

In the initial decision, the ALJ ruled that the statute of limitation began running when the Department sent the notices of overpayments to Mr. Lambert on March 26, 1997. Thus, under former RCW 43.20B.030, the Department had until March 25, 2003 to seek recovery of the overpayments. The ALJ further detailed actions by the Department that effectively tolled the statute of limitation: (1) referring the matter for prosecution in 1999, resulting in a guilty plea and order of restitution (albeit later nullified when the plea was vacated); (2) filing a lien on Mr. Lambert's Spokane County property in 1997—a remedy authorized by

RCW 43.20B.620; and (3) recovering overpayments from his food assistance by deduction from subsequent assistance payments in 2002—a remedy authorized by RCW 43.20B.630(1).

Thus, the Department's August 22, 2002 notice of debt to Mr. Lambert was a timely recovery effort. The review judge likewise determined that the Department tolled the statute of limitation by initiating an administrative remedy within six years of the overpayment notices. The superior court agreed, concluding there was no misapplication of the law so as to warrant relief pursuant to RCW 34.05.570(3), and no other basis to reverse the administrative orders. We agree.

Mr. Lambert's contention that the April 24, 1996 benefits termination notice letter was a *recovery* action that started the running of the statute of limitation under former RCW 43.20B.030 is without merit.<sup>1</sup> The letter notified him that his benefits were being terminated. It was not a recovery action in a court of law, nor was it one of the statutorily authorized remedies for recovery of overpayments. *See generally* RCW 43.20B.620-.745. The Department tolled the statute of limitation by initiating this administrative action within six years of the March 26, 1997 overpayment notices.

Mr. Lambert fails his burden of showing invalidity of the Department's action to

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<sup>1</sup> His additional contention that overpayment notices sent to him by the Department on June 27, 1996 started the running of the limitation period lacks merit. Those notices identify additional overpayments he received in May and June 1996 that are not a subject of this litigation.

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recover on its notice of debt. We find no merit to his contentions and affirm the superior court's order affirming the January 29, 2004 review decision and final order.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Schultheis, A.C.J.

WE CONCUR:

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Brown, J.

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Kato, J.